IN THE UNITED STATE DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA

No.____________________

CHRISTOPHER ISLAR, OPUS # 0638076 Plaintiff, v. SGT. HICKS, CORRECTIONAL OFFICERS CAPUTO, PENNELL, BARKER, and CURTIS. Defendants.	))))))))))	COMPLAINT (Jury Trial Demanded)

Preliminary Statement

1. This is an action by Plaintiff, Christopher Islar, brought pursuant to 42 U.S.C. § 1983, to redress the deprivation by Defendants of Plaintiff's right to be free from cruel and unusual punishment as guaranteed by the Eighth Amendment and Fourteenth Amendments to the United States Constitution. Plaintiff, an indigent, seeks to proceed *in forma pauperis* pursuant to 42 U.S.C. § 1915 and requests that service be made pursuant to 42 U.S.C. §1915(d).

Jurisdiction

2. The jurisdiction of the Court is invoked pursuant to 28 U.S.C. § 1331, in that the claims arose under the Constitution of the United States; and by 42 U.S.C. § 1983 and 28

U.S.C. § 1343 because this case seeks to redress the deprivation of rights under color of state law.

Venue

3. Venue is proper in this court pursuant to 28 U.S.C. § 1391 (b), because the events and omissions giving rise to Plaintiff's claims occurred at Alexander Correctional Institution, located in Alexander County, which is within the Western District of North Carolina.

Parties

4. At all times relevant to this action, Plaintiff was an inmate in the custody of the North Carolina Department of Correction (hereinafter DOC), and was confined at Alexander Correctional Institution in Taylorsville, North Carolina.

5. At all times relevant to this action, Sgt. Hicks (first name unknown) was a correctional sergeant employed by the DOC at Alexander Correctional Institution. He is sued in his individual capacity.

6. At all times relevant to this action, Correctional Officers (hereinafter C.O.s) Caputo, Pennell, Barker, and Curtis (first names unknown) were correctional officers employed by the DOC at Alexander Correctional Institution. These defendants are sued in their individual capacities.

8. At all times relevant to this action, the Defendants were acting under color of state law as employees of the DOC.

Factual Allegations

9. On April 28, 2007, Plaintiff was housed in segregation at Alexander Correctional Institution. At approximately 11:25 a.m., Plaintiff was in an outdoor recreation cage. Correctional officers were escorting segregation inmates from outdoor recreation cages back to their cells, and at this time C.O.s Pennell and Caputo approached Plaintiff's recreation cage.

10. Plaintiff had experienced previous conflicts with C.O. Caputo, including an incident of March 3, 2007, when Plaintiff and other inmates protested Caputo's refusal to acknowledge complaints about food trays, and his refusal to feed another inmate, by kicking their cell doors and demanding to see the officer-in-charge (OIC).

11. On April 28, 2007, Plaintiff initially submitted to restraints by sticking his hands out to be handcuffed. However, C.O. Caputo seized Plaintiff's left hand and aggressively twisted it upwards, causing Plaintiff pain. Due to the pain, Plaintiff attempted to free himself from Caputo's grip. Caputo subsequently released the handcuffs, causing Plaintiff to fall to the ground.

12. C.O. Caputo then called Sgt. Hicks to the recreation area. C.O. Caputo told Sgt. Hicks that Plaintiff had attempted to pull Caputo's hand through the cage fence. Plaintiff told Sgt. Hicks that Caputo had hurt him while twisting his hand to apply restraints. After speaking with Sgt. Hicks, Plaintiff submitted to restraints.

13. Although Sgt. Hicks was aware of C.O. Caputo's actions, he allowed Caputo to escort Plaintiff back to his cell.

14. Upon arrival at Plaintiff's cell, C.O.s Caputo and Pennell removed Plaintiff's leg shackles. Plaintiff saw C.O.s Curtis and Barker standing in his cell door and he asked those officers to get C.O. Caputo away from him. However, Plaintiff's pleas were ignored.

15. C.O. Caputo then pushed Plaintiff onto the cell bunk. While Plaintiff was positioned on his knees on the bunk, Caputo slammed Plaintiff's head against the wall. C.O.s Barker and Pennell then grabbed Plaintiff's feet and jerked them out from under him, causing Plaintiff to fall face forward on the bunk. C.O. Caputo then positioned himself on Plaintiff's back.

16. Although plaintiff was not resisting the officers, C.O. Caputo told plaintiff to stop resisting or be sprayed. C.O. Caputo then took his can of pepper spray, placed it next to Plaintiff's right eye, and sprayed directly into Plaintiff's eye. Plaintiff tried to turn his head to avoid being sprayed further, but Caputo pushed Plaintiff's head into the bunk with his forearm in an attempt to smother Plaintiff. Plaintiff turned his head back in order to breathe, and Caputo again sprayed him directly in the right eye.

17. Plaintiff continued to ask other officers to get C.O. Caputo away from him. C.O. Curtis told Caputo to step back, but Caputo failed to do so. Neither C.O. Curtis, nor any other named defendant, physically intervened to prevent C.O. Caputo's assault of Plaintiff.

18. C.O. Caputo eventually ceased his assault after Sgt. Hicks arrived at Plaintiff's cell. Sgt. Hicks told plaintiff that he would "take care of the situation." Sgt. Hicks then escorted Plaintiff to a shower to decontaminate from the pepper spray.

19. Following the assault by C.O. Caputo, Plaintiff suffered injuries in the form of facial swelling; swelling of the right eye to the point where the eye was shut; burning pain in the right eye; headaches; back and neck pain; insomnia; and vision problems.

First Cause of Action

20. The allegations contained in paragraphs 1-19 are incorporated by reference as if fully set forth herein.

21. The use of force by C.O. Caputo as alleged in paragraphs 1-19 was done maliciously and sadistically for the purpose of inflicting pain, thereby violating Plaintiff's right under the Eighth and Fourteenth Amendments to the U.S. Constitution to be free from cruel and unusual punishment.

22. The actions of C.O. Caputo were a proximate cause of Plaintiff's injuries.

Second Cause of Action

23. The allegations of paragraphs 1-22 are incorporated by reference as if fully set forth herein.

24. The failure of C.O.s Curtis, Barker and Pennell to separate Plaintiff from C.O. Caputo, after it became apparent that Caputo was attempting to injure Plaintiff, constituted deliberate indifference to a substantial risk of serious harm to Plaintiff, thereby violating Plaintiff's right under the Eighth and Fourteenth Amendments to the U.S. Constitution to be free from cruel and unusual punishment.

25. The inaction of C.O.s Curtis, Barker, and Pennell, was a proximate cause of Plaintiff's injuries.

Third Cause of Action

26. The allegations of paragraphs 1-25 are incorporated by reference as if fully set forth herein.

27. The actions of C.O.s Barker and Pennell, by jerking Plaintiff's feet out from under him, aided Caputo in his assault on Plaintiff after Caputo had slammed Plaintiff's head into the cell wall. This was done maliciously and sadistically and for the purpose of causing Plaintiff harm.

28. The actions of C.O.s Barker and Pennell were a proximate cause of Plaintiff's injuries.

Fourth Cause of Action

29. The allegations of paragraphs 1-28 are incorporated by reference as if fully set forth herein.

30. Sgt. Hicks had actual knowledge of C.O. Caputo's previous attempt to injure Plaintiff at the recreation cage. Despite having actual knowledge of the risk that C.O. Caputo posed to Plaintiff, Sgt. Hicks allowed Caputo to escort Plaintiff back to his cell while in full restraints.

31. Sgt. Hicks' failure to substitute another officer for Caputo to return plaintiff to his cell constituted deliberate indifference to a significant risk of serious harm towards Plaintiff, and thereby violating Plaintiff's right under the Eighth and Fourteenth Amendments to the U.S. Constitution to be free from cruel and unusual punishment

32. Sgt. Hicks' failure to take reasonable action to protect Plaintiff from the risk of harm posed by C.O. Caputo was a proximate cause of Plaintiff's injuries.

Prayer For Relief

WHEREFORE, plaintiff respectfully requests that this Court:

1) Afford Plaintiff a trial by jury;
2) Enter a judgment against Defendants for compensatory and punitive damages for a sum to be determined by jury;
3) All other relief to which Plaintiff may appear entitled, including the costs of this action.

Respectfully Submitted.

This 4th day of March 2010

/s/ James Kenneth Butler
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CERTIFICATE OF SERVICE

I hereby certify that on March 4, 2010, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

and I hereby certify that I have mailed the document to the following non CM/ECF participants:

Christopher Islar
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Respectfully submitted,

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